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AB 2306: Anti-paparazzi updated for tech advances

By Christine Peek

In 1998, the state Legislature enacted Civil Code Section 1708.8, the “anti-paparazzi” law, following the death of Diana, Princess of Wales in a high speed car chase fueled in part by pursuing paparazzi. Subdivision (b) of that section creates a private right of action against “constructive” invasions of privacy — those which do not involve a physical trespass, but which could not be accomplished without trespassing unless the defendant used a “visual or auditory enhancing device.” Effective as of Jan. 1, 2015, Assembly Bill 2306 clarified and broadened the law by replacing the phrase “visual or auditory enhancing device” with “any device.”

The law aims to clarify subdivision (b) to better encompass advances in technology, including the use of drones. Some legislative commentary characterized the old language as “overly-restrictive,” asserting that “a drone with a standard (as opposed to ‘enhanced’) camera or microphone could achieve the same (or even more detailed) images than could an enhanced device used from afar.”

Under the revised law, liability does not depend on whether the device qualifies as a “visual or auditory enhancing device.” Instead, the new language shifts the focus to whether the invasion would have been possible without either a trespass or the use of “any device.”

Although the anti-paparazzi statute targets individuals looking to profit from content obtained in violation of privacy rights, liability for “constructive” invasion of privacy is not limited to commercially motivated defendants. Any person may be liable if he or she (1) attempts to capture (not actually captures) a visual image, sound recording, or other physical impression of the plaintiff; (2) engaging in “private, personal, or family activity” as defined elsewhere in the statute; (3) in a manner that is offensive to a reasonable person; (4) through the use of any device; and (5) the image, sound recording, or other physical impression



Associated Press

The funeral cortege of Diana, Princess of Wales passes through the village of Harlestone, Northamptonshire, Sept. 6, 1997.

could not have been achieved without a trespass unless the device was used.

The revised language makes it clear that persons operating drones in search of salacious footage to sell are covered if these elements are met. In addition, the activities of an unpaid drone hobbyist might be covered if they are deemed “attempts to capture” certain types of recordings and the other elements are met.

Although the anti-paparazzi statute appears to provide strong privacy protections in certain circumstances, there are few published authorities clarifying its scope. It remains to be seen whether AB 2306’s revisions will lead to further judicial development of this relatively little-used statute. In addition, there may be other opportunities for clarification and interpretation as the law of unmanned aerial vehicles continues to evolve.

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